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Ravalli County Commissioners

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Attorneys for Plaintiffs/Petitioners

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT,
RAVALLI COUNTY

PHILLIP TAYLOR, STEWART
BRANDBORG, and BITTERROOTERS
FOR PLANNING;
 Plaintiffs/Petitioners,

v.

THE BOARD OF ADJUSTMENT OF
RAVALLI COUNTY, a body politic of a
political subdivision of the State of Montana

Defendant/Respondent.

Cause No. DV-07-419

COMPLAINT & PETITION

Plaintiffs/Petitioners, through their counsel of record, hereby petition the Court pursuant to M.C.A. § 76-2-227 for appeal and review of Defendant/Respondent Ravalli County Board of Adjustment decision to approve the Variance Request from the Interim Zoning Regulation (Resolution 2038) for Lot 6-A of the Brooks Hotel subdivision applied for by R&G Development; M.C.A. § 27-8-101 for declaratory relief; and M.C.A. § 27-19-101 for injunctive relief. Petitioners allege first that the Board of Adjustment had no jurisdiction to make any findings and conclusions on the variance, and in the alternative, that the Board's decision was arbitrary and capricious or otherwise unlawful, and should be vacated and remanded for further consideration.

1. Petitioners Phillip Taylor and Stewart Brandborg are residents and taxpayers of Ravalli County who are members and directors of Bitterrooters for Planning, a Montana non-profit corporation. Petitioners Taylor and Brandborg are threatened with injury as a result of the Board's actions, including but not limited to injury to their property values, their quality of life, and their right to a clean and healthful environment. These individual petitioners have standing under the Montana constitution, and have standing pursuant to MCA § 76-2-227.
2. Respondent is a body politic of a political subdivision of the State of Montana and is the governing board authorized to review and approve or disapprove of proposed variances and exceptions to Ravalli County zoning regulations.
3. This Court has jurisdiction pursuant to MCA § 3-5-302 and MCA § 76-2-227.

4. Venue is proper in the Twenty-First Judicial District, Ravalli County, as the Respondent/Defendant resides here, the conduct complained of occurred here, and the Plaintiffs/Petitioners reside here.
5. On November 7, 2006, voters of Ravalli County voted to adopt an interim zoning regulation limiting subdivisions to a density of 1 residence per 2 acres.
6. The Ravalli County Commissioners passed and approved Resolution 2038 on February 27, 2007 to cross-reference the election adopting an Interim Zoning Regulation limiting subdivisions to a density of 1 residence per 2 acres.
7. The Interim Zoning Regulation provided for the appointment of a Board of Adjustment pursuant to MCA § 76-2-221.
8. Pursuant to MCA § 76-2-221, the board of adjustment may make special exceptions to the terms of the zoning resolution in harmony with its general purposes and intent.
9. The general purposes and intent of the Interim Zoning Regulation was to limit any new developments in Ravalli County to one dwelling per two acres as an emergency measure until long-term zoning regulations are adopted in order to protect the public health, safety, and general welfare of the people, and to conserve the values of property throughout the county and protect the character and stability of agricultural, residential, business, and industrial areas in Ravalli County.
10. Pursuant to the Interim Zoning Regulation, zoning variances may be applied for when, due to special circumstances or conditions such as exceptional topographic conditions, narrowness, shallowness, or the shape of a specific piece of property,

the literal enforcement of the provisions of the Interim Zoning Regulation would result in peculiar and exceptional practical difficulties to, or exceptions and undue hardship upon, the owners of the property.

11. Pursuant to the Interim Zoning Regulation, no preliminary plat subdivision applications may be approved that provide for the building of residences at a higher density than one dwelling per two acres.
12. Ravalli County planning staff prepared a staff report and recommendation on the variance request made by R & G Development for the Lot 6-A of the Brooks Hotel subdivision.
13. Pursuant to MCA § 76-3-601 et seq., Board of County Commissioners, the governing body of Ravalli County, is the entity that reviews and approves subdivision applications.
14. The Ravalli County Board of County Commissioners did not review and approve or deny the subdivision application for Lot 6-A, Brooks Hotel subdivision.
15. Pursuant to MCA § 76-2-223 and the Bylaws of the Ravalli County Board of Adjustment, the Board of Adjustment has the power to hear appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning regulation.
16. Because the Ravalli County Board of County Commissioners did not review and approve or deny the subdivision application for Lot 6-A of the Brooks Hotel subdivision, no order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning regulation was ever made

for the Lot 6-A of the Brooks Hotel subdivision from which an appeal could issue.

17. Because there was no order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning regulation from which an appeal could issue, no appeal of any order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning regulation was ever presented to the Board of Adjustment, therefore the Board of Adjustment was without jurisdiction to make any ruling on the variance request by R & G Development for the Lot 6-A of the Brooks Hotel subdivision.
18. Pursuant to the Interim Zoning Regulation, the Board of Adjustment shall not approve a variance unless it makes findings based upon the evidence in each specific case that:
 - A. The variance is consistent with the general purposes of the Interim Zoning Regulation, and will conform to all of the following requirements and stipulations; and
 - B. Strict application of the Interim Zoning Regulation would result in great practical difficulties or hardship to the applicant (not mere inconvenience) and prevent a reasonable return on the property; and
 - C. The variance is the minimum deviation from such requirements that will alleviate the difficulties/hardship, and allow a reasonable return on the property; and
 - D. The plight of the applicant is due to the circumstances not of his/her own making; and

- E. The circumstances engendering the variance request are peculiar and not applicable to other property within the district; and
 - F. The variance will not alter the essential character of the area where the premises in question are located nor adversely affect the public health, safety, and/or welfare; and
 - G. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulation or comprehensive plan; and
 - H. The variance will not contribute to the emergency situation that exists in Ravalli County as defined in the Interim Zoning Regulation; and
 - I. The variance is in the public interest.
- 19. The variance application for Lot 6-A of the Brooks Hotel subdivision was determined to be complete on May 9, 2007 by Ravalli County staff.
 - 20. The Ravalli County Planning staff reviewed the variance application and recommended that the variance request be denied, based upon the staff findings regarding the specific criteria (A through I) necessary for the Board of Adjustment to grant a variance.
 - 21. The Ravalli County Planning staff findings included negative findings for Criterion A, Criterion B, Criterion C, and Criterion E.
 - 22. On June 25, 2007 the Board of Adjustment conducted a hearing on a variance request for Brooks Hotel, Lot 6-A, AP from R & G Development.
 - 23. On July 16, 2007 the Board of Adjustment issued its variance decision for the variance request for Lot 6-A of the Brooks Hotel subdivision.

24. The Board of Adjustment made positive findings on each of the specific criteria (A through I), and approved the variance request.
25. The Findings and Conclusions of the Board of Adjustment in approving the variance request for Lot 6-A of the Brooks Hotel subdivision are arbitrary, capricious, and otherwise not in conformance with law.
26. The Board of Adjustment's Findings and Conclusions regarding Criterion B are arbitrary and capricious because there is no evidence that the property's location between two water courses and exposure to weed infestation or face a return on investment less than hoped for would present great practical difficulties or hardship, as opposed to mere inconvenience.
27. The Board of Adjustment's Findings and Conclusions regarding Criterion C are arbitrary and capricious because there is no evidence to support the conclusion that allowing a seven-lot subdivision with 14 units is the minimum conceivable deviation from the Interim Zoning Regulation and still experience a reasonable return on the property.
28. The Board of Adjustment's Findings and Conclusions regarding Criterion E are arbitrary and capricious because there is no evidence that circumstances engendering the variance request are unique to Lot 6-A Brooks Hotel subdivision.
29. The Board of Adjustment's Findings and Conclusions regarding Criterion G are arbitrary and capricious because the variance will place the subdivision in nonconformance with an adopted zoning regulation, the Interim Zoning Regulation that limits development to one dwelling per two acres.

30. The Board of Adjustment's Findings and Conclusions regarding Criterion H are arbitrary and capricious because subdividing a 3.35 acre plot into 14 units is precisely the density that the Interim Zoning Regulation describes as an emergency situation.
31. The Board of Adjustment's Findings and Conclusions regarding Criterion I are arbitrary and capricious because the voting public of Ravalli County defined that any subdivision with more than one dwelling per two acres was not in the public interest by passing the Interim Zoning Regulation.
32. The Board of Adjustment's Findings and Conclusions regarding Criterion A are arbitrary and capricious because the variance request does not conform to all of the criteria for granting a variance request.
33. The Board of Adjustment's approval of the variance for Lot 6-A of the Brooks Hotel subdivision is not in harmony with the Interim Zoning Regulation, in violation of MCA § 76-2-221.

WHEREFORE, Petitioners pray for relief as follows:

- I. That the Court declare that the Ravalli County Board of Adjustment was without jurisdiction to consider the variance request for Lot 6-A of the Brooks Hotel subdivision;
- II. That the Court declare the Ravalli County Board of Adjustment's actions in approving the variance request for Lot 6-A of the Brooks Hotel subdivision a violation of the Interim Zoning Regulation, and therefore arbitrary, capricious, or otherwise not in accordance with the law;

- III. That the Court issue a permanent injunction enjoining the Ravalli County Board of Adjustment from implementing approval of the variance request for Lot 6-A of the Brooks Hotel subdivision;
- IV. That the Court establish such hearing and other procedures as it may deem appropriate to ensure that Petitioners, the Board of Adjustment, and other interested parties are afforded the opportunity to appear and present evidence and arguments;
- V. That after review and hearing, the Court declare Respondent's July 16, 2007 decision arbitrary, capricious, or otherwise not in accordance with the law;
- VI. That the Court reverse the approval of the variance request for Lot 6-A of the Brooks Hotel subdivision;
- VII. That the Court award reasonable attorneys' fees and costs of bringing this action for Petitioners;
- VIII. That the Court award such other and further relief as the Court may deem just, equitable, and appropriate under the circumstances of this proceeding.

RESPECTFULLY SUBMITTED this 14th day of August, 2007.

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Attorneys for Plaintiffs/Petitioners

/s/ Curtis C. Cook
Curtis C. Cook

VERIFICATION

I, Stewart Brandborg, Plaintiff-Petitioner, verify that the facts and allegations in this Petition and Complaint are true and correct.

/s/ Stewart Brandborg
Stewart Brandborg

I, Phillip Taylor, Plaintiff-Petitioner, verify that the facts and allegations in this Petition and Complaint are true and correct.

/s/ Phillip Taylor
Phillip Taylor